No. 84-1299

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

RAMIRO ARANGO

vs.

THE STATE OF FLORIDA

ON APPEAL FROM AN ORDER GIVEN BY THE FLORIDA THIRD DISTRICT COURT OF APPEALS

JURISDICTIONAL STATEMENT BY THE APPELLANT

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QUESTIONS PRESENTED

1. Violation of the federal principles of due process and equal protection by the existence in Florida of a double standard of justice applied simultaneously for correcting the same conduct, the unauthorized practice of law, with dual legal forums and rules; by Florida Statute 454.23(enacted by the legislative in 1925) in the State Circuits Courts, under the Florida Rules of Criminal Procedure; and since 1968 Florida Constitution, in the Florida Supreme Court, under the Rule 16 of the Florida Bar Integration Rules' Procedure.

2. Constitutionality of Florida Statute 454.23

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1984

No.

RAMIRO ARANGO

v.

THE STATE OF FLORIDA

ON APPEAL TO AN ORDER GIVEN BY THE
FLORIDA 3rd DISTRICT COURT OF APPEALS

JURISDICTIONAL STATEMENT BY THE APPELLANT

As per Rule 15 of the Supreme Court Rules, the Appellant submits the following statement:

1. **REPORTS AND OPINIONS delivered in the Courts below:** The State Courts did not cite any opinion in this case, they decided "per curiam".

2. **Grounds on which the Jurisdiction of this Court is invoked:**

a. Nature of the proceeding and the Statute pursuant to which it is brought the case to the attention of the Supreme Court of the United States.

The U.S. Supreme Court's Appellate Jurisdiction is invoked to deal with an appeal to Florida 3rd District Court of Appeals Order referred to a case concerning violations to fourteenth Amendment of the Federal Constitution. This is the State Court of last resort for this case.

b. Date of the Order sought to the be reviewed.

The Florida Third District Court of Appeals by order dated August 14th, 1984 affirmed per curiam the Florida 11th Circuit Court's Order dated on the 9th of July 1984 denying

the Motion for post conviction relief pursuant to Florida Rules of Criminal Procedure 3,850.

A rehearing was requested by the Appellant and the Florida Third District Court of Appeals denied it on September 12th, 1984.

Notice of appeal was filed on October 11th, 1984 invoking the U.S. Supreme Court's jurisdiction.

c. The Statutory provisions conferring jurisdiction to this Court: Title 28 USC Sections 1257 and 2101 to 2106.

d. Cases sustaining this Court's Jurisdiction:

Whether state court denied to rights asserted under local law protection guaranteed by Federal Constitution is question on which United States Supreme Court's judgment may be invoked. Broad River Power Co. v. State of South Carolina ex rel. Daniel, 1930, 50 S.Ct. 401, 281 US. 537, 74 L.Ed. 1023, rehearing affirmed 51 S.Ct. 94, 282 U.S. 187, 75 L.Ed. 287.

Supreme Court, in passing on constitutional questions, regards substance, and statute attacked must be tested by operation and effect. Near v. State of Minnesota, 1931, 51 S.Ct. 625, 283 U.S. 697, 78 L.Ed. 1357.

The Supreme Court had jurisdiction of appeal from highest state court, where appeal challenged validity of state statute and raised a substantial federal question as to whether state statute conflicted with federal statute. Reconstruction Finance Corp. v. Beaver County, Pa. 1946, 66 S. Ct. 992, 328 U.S. 204, 90 L. Ed. 1172.

Where highest court of state determined that state statute did not violate U.S.C.A. Const. Amend. 14, 1. United State Supreme Court had jurisdiction of appeal. Winters v. People of State of N.Y. N.Y. 1948, 68 S.Ct. 665, 333 U.S. 507, 92 L.Ed. 840.

The scope of a habeas corpus proceeding brought in a state court by one convicted in the courts of such state is a state and not a federal question, and where the state court treated the proceeding as properly raising issues of federal constitutional rights, United States Supreme

Court has jurisdiction and such issues are open there. Herndon v Lowry, Ga. 1937, 57 S.Ct. 732, 301 U.S. 242, 81L.Ed. 1066.

Where state statute was challenged in state court under due process clause of U.S.C.A.Const. Amend. 14 case was properly before Supreme Court on writ of error. Miller v. Schoene, Va. 1928, 48 S.Ct. 246, 276 U.S. 272, 72 L.Ed. 568.

In reviewing the judgment of a state court in a case in which it was unsuccessfully contended that a state law deprived a party of rights secured by the Federal Constitution, the Federal Supreme Court is concerned not with the characterization or construction of the state law by the state court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in force by the state. Corn Products Refining Co. v. Eddy, 1919, 39 S.Ct. 325, 249 U.S. 427, 63 L.Ed. 689.

The power of the United States Supreme Court to undo conviction in state courts is limited to the enforcement of those fundamental principles of liberty and justice which are secured by U.S.C.A.Const. Amend. 14. McNabb v. U.S., Tenn. 1943, 63 S.Ct. 608, 318 U.S. 322, 87 L.Ed. 819, rehearing denied 63 S.Ct. 1322, 319 U.S. 784, 87 L.Ed. 1727.

Where a right is claimed in a state court arising under a statute of the United States, a question is presented reviewable by the Supreme Court of the United States, Supreme Lodge, etc. v. Knights of Pythias of North America etc., 1912, 59 So. 88, 102 Miss. 280.

e. The constitutionality and validity of the Florida Statute 454.23 are involved. Its text is as follows:

Penalties: Any person not licensed or otherwise authorized by the Supreme Court of Florida who shall practice law or assume or hold himself out to the public as qualified to practice law in this state, or who wilfully pretends to be, or wilfully takes or uses any name, title, addition or description implying that he is qualified, or recognized by law as qualified to act as a lawyer in this

state, and any person entitled to practice who shall violate any provision of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in F.S.775.083.

Article 5, Sec. 15, Florida Constitution, grants exclusive jurisdiction in the Supreme Court to regulate the admission of persons to the practice of law and provides as follows:

> The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and discipline of persons admitted. (*id*)

3. The questions presented by the appeal:

a) Constitutionality of the Florida Statute 454.23
b) Lower Court lack of Jurisdiction over the subject matter. Collateral attack to the sentencing.
c) Violation of the federal principles of due process and equal protection by the existence in Florida of a double standard of justice applied simultaneously for correcting the same conduct, the unauthorized practice of law, with dual legal forums, in the State Circuit Courts, and since 1968 Florida Constitution, with the "sole exclusive" forum of the Florida Supreme Court.

4. STATEMENT OF THE CASE AND FACTS

The Appellant in this case is an American citizen of Cuban origin, member of a group of Cuban-Americans residents in Florida who were practicing attorneys in Cuba and applied to get their license to practice in Florida through an official program created by an Order given by the Supreme Court of Florida in 1973, creating a "Cuban American Lawyers Institute" (CALI) as a way for satisfying a "public welfare need" of the numerous Cuban tax payer community in Florida, offering to the CALI applicants two years of intensive common law studies at Miami or Gainesville Universities and the possibility of earning their Florida license through a bar exam. The appellant earns his livelihood doing paralegal works for several licensed attorneys while he waits to get his license to practice.

The Florida Bar started proceedings in the Supreme Court of Florida as per 1968 Florida Constitution to prosecute the Appellant under Rule 16 of the Florida Bar Integration. Rules for "unauthorized practice of Law". The Florida Constitution make an exclusive province of the Supreme Court the regulation of the practice of law in the state.

Simultaneously, as a parallel prosecution to correct the same conduct, the State of Florida charged the Appellant with a violation of Florida Statute 454.23 (enacted in 1925) for the misdemeanor of "unauthorized practice of law", in the Eleventh Circuit Court of Florida, in and for Dade County, he was found guilty and sentenced with the maximum sentencing for said misdemeanor of 364 days in jail.

This judgment was appealed to the Florida Third District Court of Appeals and affirmed per curian **without any opinion.**

The plaintiff's attorney presented a motion for mitigation and a State Habeas Corpus to the Lower Court (Fla. 11th Circuit) based on the unconstitutionality and lack of jurisdiction over the subject matter of the Lower Court because since the new Florida Constitution of 1968 the regulation of the practice of law is the exclusive province of the Florida Supreme Court. The F.S. 454.23 is obsolete (1925) and superseaded by the new Constitution and rules and procedures enacted by the Supreme Court for the correction of the unauthorized practice of law through the Florida Bar Committee for prosecuting the Unauthorized Practice of Law. The breach to federal principles of due process and equal protection were raised by the habeas corpus. Both, the motion and the State Habeas Corpus were denied by the Lower Court **without opinion.**

Following the Florida Constitutional principle (Article 5 section 15, Fla. Const. 1968) that the supreme Court of Florida is the only one with jurisdiction to regulate the practice of law and correct the unauthorized practice in the State, (Integration Rules of the Florida Bar Rule 16) the Plaintiff's attorney submitted the same State Habeas Corpus raising the breach to the federal principles to the Supreme Court of Florida, challenging the constitutionality and validity of the F.S. 454.23. The Florida Supreme Court denied the Habeas Corpus Petition **without opinion.**

The Plaintiff filed with the Lower State Court (11th Circuit) a post conviction remedy motion under Rule 3.850 to vacate the sentencing, raising the breach to the federal principles of due process and equal protection and alleged:

> Lack of jurisdiction over the subject matter of the State Lower Court because of the unconstitutionality of the F.S. 454.23 grounding the charges making the sentencing against the Plaintiff/Petitioner a nullity and void.
>
> F.S. 454.23 constitutionality was challenged on the following grounds:

The title of the statute is "Penalties" not giving a fair idea or reasonable indication of the general subject of the Statute.

b. The conduct intended to be corrected by the statute, "the practice of law without license" is not defined, breaking the constitutional principle of giving knowledge for the best understanding of the citizens of the conduct to be corrected by the Statute. The Statute is vague.

c. This Statute was enacted in 1925 when the Florida Bar did not exist, nearly 60 years ago. About 25 years later the Bar integration rules were enacted and in 1968 the new Florida Constitution decided to make the practice of law the exclusive province of the Supreme Court of Florida superseading the F.S. 454.23 enacted by the legislative, repealing it by implication, for inconsistency with the new State Constitution, and the new Integration Rules of the Florida Bar, Rule 16.

The Florida Supreme Court created the Florida Bar "unauthorized practice of law Committee" with special procedure for prosecuting exclusively the correction of the conduct referred to in F.S. 454.23, making unapplicable the Florida Rules of Criminal Procedure for those special cases.

The F.S. 454.23 goes against the State and Federal principles of due process and equal protection of the Laws. Under the present circumstances would be to maintain a double standard of justice with a dual system to correct the same conduct, by the Supreme Court and the obsolete type of correction given by the 1925 statute.

The Plaintiff/ Petitioner has been simultaneously submitted to both procedures for correcting the same conduct.

(EXHIBIT A) which is the most outrageous offense against the federal principles of due process and equal protection.

The Plaintiff's Motion under the Rule 3.850 was denied by the 11th Circuit Court. The Plaintiff appealed to the Florida Third District Court of Appeals and the Lower Court's decision was affirmed per curiam without any opinion.

The appellant filed a motion for rehearing grounded in the same arguments of this appeal, and it was also denied by the Florida Third District court, without any opinion.

The Third District Court of Appeals is the last available State forum to hear appeals on the case. The U.S. Supreme Court's Jurisdiction is the next legal forum to apply for remedy.

5. GROUNDS UPON WHICH THE FEDERAL QUESTIONS ARE SUBSTANTIAL IN THIS STATE COURT'S CASE

The Federal Courts never dealt before with the existence in Florida of a dual legal system running parallel and applied concurrently, as in the Appellant's case, for correcting the "unauthorized practice of law" conduct.

In 1925 the Florida legislature enacted the Statute 454.23. Prosecutions for violations under said Statute followed the Florida Rules for Criminal Procedure.

In 1968 the new Florida Constitution (Art. 5, section 15) gave to the State Supreme Court the exclusive province for regulating the practice of law in the State, and by the Florida Bar Integration Rules, Rule 16, the new procedure was given for correcting the unauthorized conduct in exclusion of the Florida Rules for Criminal Procedure.

This latter system superseaded by implication the 1925 Statute. Nevertheless the Florida Courts continue to apply both systems concurrently in breach of the federal due process and equal protection principles of the Fourteenth Amendment.

APPENDED COPY OF THE ORDERS APPEALED FROM

IN THE FLORIDA SUPREME COURT
OF FLORIDA

March 8, 1984

THE FLORIDA BAR Petitioner	**	
vs.	**	CASE NO. 62,075
RAMIRO ARANGO Respondent.	**	AMENDED SUPLEMENTAL REPORT

Pursuant to the order of the Supreme Court of Florida, Tuesday, September 20, 1985, the undersigned referee in this cause hereby submits this amended report.

The Referee adopts all Findings of Fact, Conclusions of Law and Recommendations previously stated by the Referee's report of March 25, 1983, and further orders:

That Respondent RAMIRO ARANGO be found and adjudicated guilty of indirect criminal contempt.

The Referee further recommends the Respondent be sanctioned and punished by the levying of a fine of $2,500 and imprisonment for 5 months pursuant to the Courts authority in Integration Rule, Article XVI, (III)(B)(2).

DONE and ORDERED at DADE COUNTY, FLORIDA, this 8th day of March, 1984.

ROBERT P. KAYE, REFEREE

EXHIBIT A 14.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRS DISTRICT
JULY TERM, A.D. 1984

RAMIRO ARANGO, **

vs.
THE STATE OF FLORIDA, ** CASE NO. 84–1744
**
Appellee. **

Opinion filed August 14, 1984

An Appeal under Fla. R.App.P. 9.140 (q) from the Circuit Court for Dade County, Theodore G. Mastos, Judge.

Miguel San Pedro, for appellant.

Jim Smith, Attorney General, for appellee.

Before SCHWARTZ, C.J. and BANKDULL and JORGENSON, JJ.

PER CURIAM.

Affirmed.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D., 1984

WEDNESDAY, SEPTEMBER 12, 1984

RAMIRO ARANGO Appellant.	**	
vs.	**	CASE NO. 84–1744
STATE OF FLORIDA Appellee.	**	

Upon consideration, appellant a motion for rehearing is hereby denied.

A True Copy
ATTEST:
LOUIS J. SPALLOWE
Appeal, Third District

By_____
Deputy Clerk

cc: Miguel San Pedro
Jim Smith

/lb

IN THE SUPREME COURT OF THE UNITED STATES ON APPEAL FROM A FLORIDA THIRD DISTRICT COURT OF APPEALS' FINAL ORDER

Florida 3rd D.C.A. CASE No. 84–174

CRIMINAL DIVISION

RAMIRO ARANGO
Appellant,
vs.
THE STATE OF FLORIDA
Appellee.

NOTICE OF APPEAL

RAMIRO ARANGO,
Appellant,
vs.
THE STATE OF FLORIDA,
Appellee.

COMES NOW the Appellant and give notice of appeal invoking the Supreme Court of the United States Jurisdiction on Appeal to a Final Order dated on the 14th of August, 1984, rehearing denied on the 12th of September, 1984, given by the Florida Third District Court on Appeals, a State Court of last resort, in its criminal case No. 84-1744.

The Appellant invokes the Supreme Court of the United Stated Jurisdiction grounded on breaches to the Federal Constitution Fourteenth Amendment, with violation to the due process principle by applying in a criminal case a Florida State unconstitutional statute and violation of the equal protection of the laws by applying in Florida a dual system of justice to correct the same unauthorized conduct.

I HEREBY CERTIFY that a true copy was mailed on the 11th day of October, 1984 to the State Attorney's Office at the Dade County Metro Justice Bldg., 1351 N.W. 12 Street, Miami, Florida.

I further certify that all parties in interest in the case were duly served.

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CONCLUSION

The Supreme Court of the United States should take Jurisdiction and know the case on the merits.

Respectfully submitted.

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October 1984

CERTIFICATE OF SERVICE

I, hereby certify that three copies were mailed on **February 11, 1985 to the** Florida State Attorney's office at Dade County Metro Justice Bldg., 1351 NW 12 Street, Miami, Florida.

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BEST AVAILABLE COPY